

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Curtis E. Stevens EXAMINER: Thanhnga B. Truong
SERIAL NUMBER: 09/810,731 ART UNIT: 2135
FILING DATE: March 16, 2001 CONFIRMATION NO: 6847
FOR: METHODS OF GRANTING ACCESS TO A PROTECTED AREA

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

August 12, 2009
Palo Alto, California

**STATEMENT ACCOMPANYING PETITION TO REVIVE UNINTENTIONALLY
ABANDONED APPLICATION UNDER 37 C.F.R. § 1.137(b)**

This Statement accompanies a Petition to Revive An Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b). The above-identified application was abandoned for failure to file a Response to the Office Action mailed on July 28, 2006. The entire delay in filing the required response from the final due date for filing a response to the Office Action until the filing of a grantable petition was unintentional (37 C.F.R. §1.137(b)(3)).

In addition to this Statement, the required items for a Petition to Revive An Unintentionally Abandoned Application on the grounds that the failure to reply was unintentional (37 CFR 1.137(b)) are submitted herewith, namely, (1) a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b); (2) the required reply (response to the outstanding Office Action); and (3) the petition fee as set forth in 37 CFR 1.17(m).

Statements of fact establishing that any delay was unintentional are set forth below. In support of these Statements, the Declaration of Lesley C. Boveri (“Boveri Decl.”) is submitted herewith. Ms. Boveri had first-hand knowledge of the facts supporting Phoenix Technologies Ltd.’s (“Phoenix”) Petition to Revive.

STATEMENTS OF FACTS

1. Loren H. McRoss served as Intellectual Property Counsel for Phoenix Technologies Ltd. (“Phoenix”) from May 26, 2003 to February 13, 2009. Mr. McRoss’ duties included the management of Phoenix’s patent portfolio in the United States and abroad. (Boveri Decl. ¶3)
2. Mr. McRoss ended his employment as Intellectual Property Counsel for Phoenix on February 13, 2009. (Boveri Decl. ¶3)
3. On February 9, 2009, Lesley Boveri started working at Phoenix as Associate General Counsel, Intellectual Property. Ms. Boveri’s duties included management of Phoenix’s entire patent portfolio. (Boveri Decl. ¶1)
4. It was Ms. Boveri’s understanding that prior to her joining Phoenix, the company did not use outside counsel for patent prosecution in the United States. (Boveri Decl. ¶4)
5. During the relevant time period, Phoenix’s United States patent docket was and continues to be managed by an in-house docketing system using a patent management computer database. (Boveri Decl. ¶5)
6. It was Ms. Boveri’s understanding that Mr. McRoss was the only individual entering information into the Phoenix patent management computer database. (Boveri Decl. ¶5)
7. To the best of Ms. Boveri’s knowledge, no other docket was maintained for Phoenix’s United States’ patent applications. (Boveri Decl. ¶6)
8. In April of 2009, Ms. Boveri began an audit of the Phoenix patent prosecution files. The audit was completed on June 26, 2009. (Boveri Decl. ¶7)

9. During the course of the audit, Ms. Boveri reviewed the Phoenix internal file for U.S. Patent Application No. 09/810,731 entitled “METHODS OF GRANTING ACCESS TO A PROTECTED AREA” by inventor Curtis E. Stevens. The application was filed on March 16, 2001 and assigned to Phoenix Technologies Ltd. (Boveri Decl. ¶8)
10. Phoenix received a Notice of Abandonment dated February 9, 2007 from the United States Patent and Trademark Office (“USPTO”). According to the notice of abandonment in the file, the application went abandoned on January 29, 2007 for failing to respond to an Office Action dated July 28, 2006. (Boveri Decl. ¶9)
11. In reviewing all of Phoenix’s patent prosecution files, Ms. Boveri realized that when Phoenix intended to discontinue prosecution of a patent application, Mr. McRoss would make a notation to the file and update the status of the application in the Phoenix docketing system so that it no longer appeared as “Pending.” (Boveri Decl. ¶10)
12. The above-referenced file did not include a note indicating that Phoenix intended to abandon the application. (Boveri Decl. ¶11)
13. To the best of Ms. Boveri’s knowledge, at the time of the audit, the Phoenix patent management docketing system designated the status of the application to be “Pending.” (Boveri Decl. ¶12)
14. During the course of the audit, it became clear to Ms. Boveri that it was Phoenix’s standard practice to update hard copy patent files with a green “Abandoned” sticker when Phoenix intended for an application to go abandoned and a pink “Patent Granted” sticker when a patent issued. No sticker indicated a pending application. (Boveri Decl. ¶13)

15. The file for the above referenced application did not have a green or pink sticker.
(Boveri Decl. ¶14)

16. During the brief transition period in which Mr. McRoss and Ms. Boveri overlapped at Phoenix, Mr. McRoss provided no indication to Ms. Boveri that Phoenix intended to abandon the above-referenced application nor did he indicate that the application had gone abandoned. (Boveri Decl. ¶15)

17. It is Ms. Boveri's belief that that there was no intention at any time for Phoenix to abandon this application. Upon learning that the abandoned status of this application was unintentional, Phoenix promptly decided to petition the USPTO for revival of U.S. Application Serial No. 09/810,731. (Boveri Decl. ¶16)

As set forth above, the entire delay in submitting the required reply from the final due date for responding to the Office Action until the filing of a grantable petition was unintentional, and such facts are corroborated by the Declaration of Lesley C. Boveri. Ms. Boveri did not realize that the abandonment was unintentional until fully appreciating Phoenix's standard practice when intending to abandon an application.

Following discovery that the abandoned status of this application was unintentional, Applicants are promptly filing a Petition to Revive An Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b). This Statement has been prepared to accompany a Petition to Revive An Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b). Applicants believe that all requirements for a Petition to Revive An Unintentionally Abandoned Application are submitted herewith in a timely manner, namely, (1) A Petition To Revive An Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b); (2) the required reply (response to the outstanding Office Action and a Petition for a three-month extension of time); and (3) the petition fee as set forth in 37 CFR 1.17(m).

Other than the Petition Fee and the Extension Fee, it is believed that no additional fees are due in connection with this submission. However, the Commissioner is hereby authorized to charge any deficiencies to Deposit Account No. 18-0580 (Reference No. 38089-506F01US).

If the enclosed papers are considered incomplete, the Office is respectfully requested to contact the undersigned collect at (650) 251-7700, Palo Alto, California.

Respectfully submitted,

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